

RATION COMMISSION 1 BEFORE THE ARIZONA CC 2 Arizon ( ...... up: (xpmission COMMISSIONERS 3 DOCKETED LEA MÁRQUEZ PETERSON - Chairwoman 4 SANDRA D. KENNEDY 1 2021 JUSTIN OLSON 5 ANNA TOVAR DOCKETED BY JIM O'CONNOR 6 7 DOCKET NO. S-21122A-20-0284 In the matter of 8 SETH JARDINE and CAROLINE JARDINE,) husband and wife, and DECISION NO. 77910 9 ECOVISTA DEVELOPMENT, LLC, an ORDER TO CEASE AND DESIST AND 10 Arizona limited liability company, and ORDER FOR ADMINISTRATIVE 11 ECOVISTA AVONDALE, LLC, an Arizona ) PENALTIES AND CONSENT TO SAME limited liability company, 12 BY: SETH JARDINE, ECOVISTA DEVELOPMENT, LLC, AND ECOVISTA Respondents. 13 AVONDALE, LLC 14 ORDER TO DISMISS WITHOUT **PREJUDICE** 15 RE: RESPONDENT CAROLINE JARDINE Respondents Seth Jardine, EcoVista Development, LLC, and EcoVista Avondale, LLC, 16 17

Respondents Seth Jardine, EcoVista Development, LLC, and EcoVista Avondale, LLC, ("Respondents") elect to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease And Desist and Order for Administrative Penalties ("Order"). Respondents admit the jurisdiction of the Arizona Corporation Commission ("Commission"); admit only for purposes of this proceeding and any other proceeding in which the Commission is a party the Findings of Fact and Conclusions of Law contained in this Order; and consents to the entry of this Order by the Commission.

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I.

### FINDINGS OF FACT

- Seth Jardine ("Jardine") was at all relevant times a resident of the state of Arizona.
   Caroline Jardine was at all relevant times the spouse of Respondent Seth Jardine. Caroline Jardine is joined in this action under A.R.S. §44-2031(C).
- Jardine and Caroline Jardine have been separated since on or around December 2019 and began the process of dissolution on or around April 6, 2020. A Consent Decree of Dissolution of Marriage was entered in Maricopa County Superior Court Cause No. FC2020-094016 on December 31, 2020.
- 3. EcoVista Development, LLC ("EcoVista Development") is a limited liability company organized under the laws of the state of Arizona on or around July 16, 2015. EcoVista Development is a manager-managed company and Jardine is the sole manager. Jardine has held himself out as the CPA and President of EcoVista Development since around 2015. EcoVista Development is a member of EcoVista Investor Fund, LLC, EcoVista Saguaro Trails, LLC, and EcoVista Skyline Vista Apartments, LLC. EcoVista Development is the manager of EcoVista Avondale, LLC, EcoVista Lone Mountain, LLC, and EcoVista Skyline Vista Apartments, LLC.
- 4. EcoVista Avondale, LLC ("EcoVista Avondale") is a limited liability company organized under the laws of the state of Arizona on or around June 19, 2020. EcoVista Avondale is a manager-managed company and EcoVista Development is the sole manager.
- At all relevant times, Jardine and Caroline Jardine were acting for their own benefit and on behalf of and for the benefit of the marital community.
- 6. Respondents posted at least 69 separate advertisements on 14 different dates between May 20, 2019 and September 22, 2020 on craigslist.org, an online classifieds website. All of the posts were posted in Phoenix-area pages and related to real estate investment opportunities. As of September 24, 2020, Respondents have at least 4 active advertisements listed on Craigslist.

- 7. On or around June 11, 2020, Respondents published an advertisement titled "INVEST IN AZ REAL ESTATE DEVELOPMENT PROJECTS!" on Craigslist. The post was published in several Phoenix-area pages under the Financial Services and Real Estate Services categories.
- 8. On June 23, 2020, an Arizona resident ("Offeree") responded to the Craigslist advertisement via email. The email stated in part "I saw your add [sic] on Craigslist and would like to know more about investment opportunities. Let me know when it would be a good time to hear more."
- 9. On July 1, 2020, Offeree received a reply. Jardine responded to the Offeree and provided a contact number (480) 215-6088. Jardine stated "I just got back into town and am following up on my messages. Were you still interested and did you want to talk about our projects?"
- 10. On July 17, 2020, Offeree received another email from Jardine stating "We are opening up investment in the attached project. If you have any interest, please let me know, and we can discuss it." The email included an attachment brochure ("Brochure") on EcoVista Development letterhead that described the "Avondale's River Grove Apartments Project."
- 11. On August 27, 2020, Offeree contacted Jardine at (480) 215-6088. Offeree told Jardine he had \$25,000 to invest, but he was very inexperienced and needed something safe to invest in. Jardine told Offeree that there was risk in this and every real estate investment, but he (Jardine) was experienced in rezoning land and not to worry. Jardine also explained that the Offeree would not be able to withdraw his investment until the project was completed and sold to a buyer. Jardine estimated this would be about 12-18 months.
- 12. Jardine followed up the phone conversation with the Offeree with an email. The email was sent from seth@ecovistahomes.com and stated in part:
- a) "Attached is the Operating Agreement on the townhome project in Avondale we are working on now. . . On the very last page, you will see the Form we use to accept new members into the Partnership."
  - b) "We signed the land contracts on July 22."

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c) "At this time, we are accepting investments into either our Class B or our Class I membership classes."

- As of November 6, 2020, there are no contracts recorded with the Maricopa County 13. Recorder's Office on the parcel identified in the Brochure; however, on July 22, 2020, Respondents entered into a land sale contract with the property owners.
- 14. The email signature block stated in part "Seth Jardine, CPA." Attached was a 47-page document titled "OPERATING AGREEMENT OF ECOVISTA AVONDALE LLC DATED JUNE 1, 2020" ("Operating Agreement").
- 15. Jardine failed to disclose that his CPA certificate was suspended from May 30, 2020 to September 1, 2020.
- 16. Jardine emailed Offeree on August 31, 2020 with more information on the River Grove project and again on September 3, 2020 to see if Offeree had any questions. Offeree responded on September 8, 2020 and inquired about what would happen to his capital contribution if the project falls through and if Respondents build the townhomes or if they sell the land before the townhomes are built. Jardine responded on September 8, 2020, stating in part, "It really isn't a case of the project 'falling through.' We are increasing the value of the land by taking it through the rezoning and entitlement processes with the City. . . When we are done, the land will be worth substantially more than what we are buying it for." Jardine also clarified "We are NOT building the townhomes. . . Our job is really to tee up the land and project for the builder."
- In his September 8, 2020 email, Offeree also expressed concerns regarding who 17. owned the property in question. Jardine responded "We don't own the land yet. It is just under contract. . . we have about a year in which we control the land and can do work with the City on it before we have to actually purchase it. . . Our goals on this project is to actually sell the land to a buyer who will then pay for the land before we need to close on it, but that is a best-case scenario."

### EcoVista Development Brochure

The Brochure included a description about EcoVista Development that stated in part: 18.

- a) "We annex, rezone, and entitle land to sell to Home and Apartment Builders."
- b) "We seek only high-margin and low-risk deals, and we discard most of the deals that come our way. If deals are too risky or the rates of return are too low, we avoid investing in those deals."
- c) "After selecting a deal, our team of specialists works with neighborhoods, cities, and Builders to develop the land in a way where all parties benefit."
  - 19. The Brochure provided three investment options:
    - a) "Option 1: Preferred Interest Partner (Rates ranging from 8% 20%)"
    - b) "Option 2: Profit Sharing Partner"
    - c) "Option 3: Any combination of Option 1 and Option 2"
- 20. The Brochure stated the investment term is approximately 12-24 months, the minimum cash investment is \$25,000, and the minimum IRA/SEP/Self Directed IRA investment is \$25,000.
- 21. The second page of the Brochure was titled "River Grove Apartments by EcoVista Avondale LLC Project Unit Mix, Pro Forma, Capital Requirements, and Estimated Return." This page identified the "Total Capital Required" as \$2,560,000 and the "Net Project Profit" as \$1,929,600.
- 22. The third page of the Brochure was titled "Project Data & Tabulations." This page included an architect's rendering of the property slated for the River Grove Apartment Community. The Assessor's Parcel Number ("APN") for the land is 500-31-007F. According to the Maricopa County Assessor's Office, the current owner of this land parcel is Zuheir Properties Inc./AR & AR Inc., an entity not associated with Jardine, and the full cash value of the land parcel for the tax year 2021 is \$1,882,500.
- 23. The first page of the Brochure lists EcoVista Development's contact information at the bottom of the page. The address given is in Scottsdale, AZ, with a phone number (480) 215-6088. Its website is www.ecovistahomes.com.

EcoVista Development Website

- 24. The home page of EcoVista Development's website states "[w]e find, entitle, rezone, and develop land for interested home and apartment buildings" and gives visitors a section to enter their name, email address, and phone number under "Would you like to learn more about our projects?"
- 25. The page titled "Recent Projects" has four links: Saguaro Trails, Forest Pleasant Estates, Avondale Apartments, and Mesa Apartments. Saguaro Trials and Forest Pleasant Estates are shown as "Sold Under Contract" while Avondale Apartments and Mesa Apartments state "Details Coming Soon!"
- 26. The page titled "Our Team," identifies Jardine as "CPA, President" and Vaughn Wilhelm as "MBA, Vice President." Jardin's biography states in part "Since 2005, Seth has operated his own CPA Firm in Arizona and has also worked as an outsourced Controller for many companies."
- 27. The website fails to disclose that Jardine's CPA certificate was suspended from May 30, 2020 to September 1, 2020. Additionally, the website fails to disclose the registration for Jardine's accounting firm, Remote Accounting, PLC, has been revoked since January 19, 2018.
- 28. EcoVista Development has also started an online crowdfunding campaign titled "EcoVista Development LLC" on equitynet.com, an online crowdfunding platform for entrepreneurs. The campaign lists the address as Scottsdale, AZ 85251 with the website www.ecovisthomes.com. The campaign funding goal is \$2,000,000 and as of September 1, 2020, there has been \$50,000 committed to the campaign. The campaign lists the "Funding Type" as "Debt Financing." This campaign is still accessible on the EquityNet website as of December 22, 2020.

### EcoVista Avondale Operating Agreement

29. Section 1.2 of the Operating Agreement states "the Company [EcoVista Avondale] shall always be operated in a manner consistent with its treatment as a 'partnership' for federal and state income tax purposes." The Operating Agreement creates nine classes of members: Class A Voting Members, and Classes B-I Non-Voting Members.

- 30. Section 1.7 states Class A Voting Members "shall have the right to vote on business issues and affairs of this Company." Class A Members receive any remaining profits and/or losses of the Company after Preferred Interest and Profit-Sharing Members have been paid. Class B Non-Voting Members "shall not have the right to vote on any issues regarding the business and affairs of this Company." Class B Members share in the profits and/or losses of the company. Classes C-I Non-Voting Members "shall not have the right to either participate in management or vote on any issues regarding the business and affairs of this Company." Class C-I Members receive a Preferred Interest rate applied to their capital contributions, with Class C receiving 8% per annum and each subsequent class receiving an additional 2% with Class I Members receiving 20% per annum. EcoVista Development is the only Class A Voting Member of EcoVista Avondale.
- 31. Section 3.1 states "[t]he business and affairs of the Company shall be managed exclusively by the Manager." Section 3.2 designates EcoVista Development as the sole Manager of EcoVista Avondale, making EcoVista Development the sole Voting Member and Manager of EcoVista Avondale. Section 3.11 of the Operating Agreement assigns a \$5,000 per month Management Fee to the Manager.
- 32. Section 2.4 states "there is no agreement for, nor time set for, the return of any Capital Contribution of any Member."
- 33. Section 2.4 of the Operating Agreement contradicts the time frame of the investment provided to Offeree by Jardine during their August 27, 2020 phone conversation and the time frame advertised in the Brochure.
- 34. The Operating Agreement fails to disclose the securities are not registered with the Commission and fails to disclose the consequences of not being registered.

### Pending Civil Lawsuit

35. Respondents have failed to meet their financial obligations with at least one prior investor. On October 16, 2019, Plaintiff filed a Complaint in Maricopa County Superior Court against Seth and Caroline Jardine and EcoVista Development, alleging Breach of Contract and

Unjust Enrichment. Plaintiff loaned Jardine and EcoVista Development \$45,000 in exchange for an unsecured promissory note, dated October 15, 2018. Plaintiff alleged Respondents failed to honor the promissory note and as of August 19, 2019, Respondents owed Plaintiff \$51,749.83.

- 36. The promissory note stated Respondents shall pay Plaintiff the principal \$45,000 on or before the maturity date of October 15, 2019, or the sale trigger date, whichever is earlier. It also stated Respondents shall pay interest at a rate of 30% per annum and a monthly interest-only payment of \$1,125.00, beginning November 15, 2018 and paid on the 15<sup>th</sup> of each month until the maturity date or the note was paid in full.
- 37. After the complaint was filed, the Respondents began making payments and Plaintiff dismissed the lawsuit. However, Respondents stopped payments, and Plaintiff filed a new Complaint on August 24, 2020 alleging as of August 2, 2020, Respondent's owed Plaintiff \$27,295.87. On October 14, 2020, Respondent paid Plaintiff \$39,297.47 to settle the civil lawsuit with Plaintiff.
- 38. At the time the Temporary Cease and Desist was filed, the real properties associated with the promissory note were still owned by EcoVista Saguaro Trails, LLC and EcoVista Lone Mountain, LLC; both companies are associated with Jardine. On October 9, 2020, the properties were sold.
- 39. Jardine failed to disclose to the Offeree that at least one of these properties had unforeseen engineering issues that caused additional financial obligations.
- 40. There are additional investors who invested with Respondents on, around, or after the time Plaintiff invested.
- 41. Respondents failed to disclose to Offeree the pending lawsuit or their outstanding debt on prior real estate projects.
- 42. Respondents solicited from investors at least \$2,641,591 in investments for their projects.
- 43. As of the date of the Consent to Entry of Order, Respondents returned at least \$3,060,247.01 to investors.

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### II.

### CONCLUSIONS OF LAW

- The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.
- 2. Respondents offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(16), 44-1801(22), and 44-1801(27).
- 3. Respondents violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.
- Respondents violated A.R.S. § 44-1842 by offering or selling securities while neither registered as a dealer or salesman nor exempt from registration.
- Respondents' conduct are grounds for a cease and desist order pursuant to A.R.S.
   § 44-2032.
- Respondents conduct are grounds for administrative penalties under A.R.S. § 44-2036.
- 7. Seth Jardine directly or indirectly controlled persons or entities within the meaning of A.R.S. § 44-1999, including but not limited to EcoVista Development, LLC, and EcoVista Avondale, LLC. Therefore, Seth Jardine is jointly and severally liable under A.R.S. § 44-1999 to the same extent as EcoVista Development, LLC, and EcoVista Avondale, LLC for any violations of A.R.S. § 44-1991.

#### III.

#### ORDER

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondents consent to the entry of this Order, attached and incorporated by reference, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondents, and any of Respondents agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED that Respondents comply with the attached Consent to Entry of Order.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondents EcoVista Avondale, LLC, EcoVista Development, LLC, and Seth Jardine, shall jointly and severally pay an administrative penalty in the amount of \$10,000 as a result of the conduct set forth in the Findings of Fact and Conclusions of Law. Payment is due in full on the date of this Order. Payment shall be made to the "State of Arizona." Any amount outstanding shall accrue interest as allowed by law.

For purposes of this Order, a bankruptcy filing by Respondents shall be an act of default. If Respondents do not comply with this Order, any outstanding balance may be deemed in default and shall be immediately due and payable.

IT IS FURTHER ORDERED, that if Respondents fail to comply with this order, the Commission may bring further legal proceedings against Respondents, including application to the superior court for an order of contempt.

IT IS FURTHER ORDERED, that no finding of fact or conclusion of law contained in this Order shall be deemed binding against any Respondent under this Docket Number who has not consented to the entry of this Order.

IT IS FURTHER ORDERED, that Caroline Jardine be dismissed from this action without 1 prejudice. 2 IT IS FURTHER ORDERED that this Order shall become effective immediately. 3 4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION 5 6 7 8 CHAIRWOMAN MÁRQUEZ PETERSON COMMISSIONER KENNEDY 9 10 **COMMISSIONER TOVAR** 11 12 IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT, 13 Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the 14 Commission to be affixed at the Capitol, in the City of Phoenix, day of April 15 this 16 17 18 EXECUTIVE DIRECTOR 19 20 DISSENT 21 22 DISSENT 23 This document is available in alternative formats by contacting Carolyn D. Buck, ADA 24 Coordinator, voice phone number (602) 542-3931, e-mail cdbuck@azcc.gov. 25 26 **EMS** 11

#### CONSENT TO ENTRY OF ORDER

- 1. Respondents Seth Jardine ("Jardine"), EcoVista Development, LLC, and EcoVista Avondale, LLC, ("Respondents") admit the jurisdiction of the Commission over the subject matter of this proceeding. Respondents acknowledge that Respondents have been fully advised of Respondents' right to a hearing to present evidence and call witnesses and Respondents knowingly and voluntarily waive any and all rights to a hearing before the Commission and all other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code. Respondents acknowledge that this Order to Cease and Desist and Order for Administrative Penalties ("Order") constitutes a valid final order of the Commission.
- Respondents knowingly and voluntarily waive any right under Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief resulting from the entry of this Order.
- Respondents acknowledge and agree that this Order is entered into freely and voluntarily and that no promise was made or coercion used to induce such entry.
- 5. Respondents have been represented by an attorney in this matter, Respondents reviewed this order with their attorney, Jay Volquardsen of Gallagher & Kennedy, and understand all terms it contains. Respondents acknowledges that their attorney has apprised them of their rights regarding any conflicts of interest arising from dual representation. Respondents acknowledge that they have given their informed consent to such representation
- 6. Respondents admit only for purposes of this proceeding and any other proceeding in which the Commission is a party the Findings of Fact and Conclusions of Law contained in this Order. Respondents agree that Respondents shall not contest the validity of the Findings of Fact and Conclusions of Law contained in this Order in any present or future proceeding in which the Commission is a party.
- Respondents further agree that they shall not deny or contest the Findings of Fact and
   Conclusions of Law contained in this Order in any present or future: (a) bankruptcy proceeding, or

(b) non-criminal proceeding in which the Commission is a party (collectively, "proceeding(s)"). They further agree that in any such proceedings, the Findings of Fact and Conclusions of Law contained in this Order may be taken as true and correct and that this Order shall collaterally estop them from re-litigating with the Commission or any other state agency, in any forum, the accuracy of the Findings of Fact and Conclusions of Law contained in this Order. In the event Respondent Jardine or Respondent Spouse pursues bankruptcy protection in the future, they further agree that in such bankruptcy proceeding, pursuant to 11 U.S.C. § 523(a)(19), the following circumstances exist:

- A. The obligations incurred as a result of this Order are a result of the conduct set forth in the Findings of Fact and Conclusions of Law in the Order and are for the violation of Arizona state securities laws, pursuant to 11 U.S.C. § 523(a)(19)(A)(i);
- B. This Order constitutes a judgment, order, consent order, or decree entered in a state proceeding pursuant to 11 U.S.C. § 523(a)(19)(B)(i), a settlement agreement entered into by Respondent Jardine pursuant to 11 U.S.C. § 523(a)(19)(B)(ii), and a court order for damages, fine, penalty, citation, restitution payment, disgorgement payment, attorney fee, cost or other payment owed by Respondent Jardine pursuant to 11 U.S.C. § 523(a)(19)(B)(iii).
- 8. By consenting to the entry of this Order, Respondents agree not to take any action or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual basis.
- 9. While this Order settles this administrative matter between Respondents and the Commission, Respondents understand that this Order does not preclude the Commission from instituting other administrative or civil proceedings based on violations that are not addressed by this Order.
- 10. Respondents understand that this Order does not preclude the Commission from referring this matter to any governmental agency for administrative, civil, or criminal proceedings that may be related to the matters addressed by this Order.

- 11. Respondents understand that this Order does not preclude any other agency or officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal proceedings that may be related to matters addressed by this Order.
- 12. Respondents agree that Respondents will not apply to the state of Arizona for registration as a securities dealer or salesman or for licensure as an investment adviser or investment adviser representative until such time as all penalties under this Order are paid in full.
- 13. Respondents agree that Respondents will not exercise any control over any entity that offers or sells securities or provides investment advisory services within or from Arizona until such time as all penalties under this Order are paid in full.
- 14. Respondents consent to the entry of this Order and agree to be fully bound by its terms and conditions.
- 15. Respondents acknowledge and understand that if Respondents fail to comply with the provisions of the order and this consent, the Commission may bring further legal proceedings against Respondents, including application to the superior court for an order of contempt.
- 16. Respondents understand that default shall render Respondents liable to the Commission for its costs of collection, including reasonable attorneys' fees and interest at the maximum legal rate.
- 17. Respondents agree and understand that if Respondents fail to make any payment as required in the Order, any outstanding balance shall be in default and shall be immediately due and payable without notice or demand. Respondents agree and understand that acceptance of any partial or late payment by the Commission is not a waiver of default by the Commission.
- 18. Seth Jardine represents that he is President of EcoVista Development, LLC, and EcoVista Avondale, LLC, and has been authorized by name of EcoVista Development, LLC, and EcoVista Avondale, LLC, to enter into this Order for and on behalf of them.

1	(Seth Jardine)
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- 1	STATE OF ARIZONA ) ss
3	County of Maricola)
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10	EcoVista Development, LLC
11	ZACK KAUFMAN Notary Public - Arizona
12	Maricopa County Commission # 556543  By Seth Jardine
13	My Commission Expires January 6, 2023  Its President
14	STATE OF ARIZONA )
15	County of Mariale ) ss
16	SUBSCRIBED AND SWORN TO BEFORE me this 2 day of March 2021.
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23	EcoVista Avondale, LLC
24	ZACK KAUFMAN Notary Public - Arizona Maricopa County
25	Commission # 558543 My Commission Expires January 6, 2023  By Seth Jardine
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1	STATE OF ARIZONA )
2	County of Macricola ) ss
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8	ZACK KAUFMAN Notary Public - Arizona Maricopa County Commission # 556543
9	My Commission Expires January 6, 2023
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1	Service List
2	Dominick San Angelo & Woodrow Thompson
3	Gallagher & Kennedy 2575 E. Camelback Rd., Suite 1100
4	Phoenix, AZ 85016 Attorneys for Respondents
5	dominick.sanangelo@gknet.com;
6	woody.thompson@gknet.com  Consented to Service by Email
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